



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

March 27, 2014

**MEMORANDUM**

**To:** The Commission

**Through:** Alec Palmer  
Staff Director

**From:** Patricia C. Orrock *PCO*  
Chief Compliance Officer

Thomas E. Hintermister *TH*  
Assistant Staff Director  
Audit Division

Zuzana O. Pacious *ZP*  
Audit Manager

Kendrick Smith *KS*  
Audit Manager

**By:** Sheraline Thomas *ST/ST*  
Lead Auditor

**Subject:** Resubmission: Audit Division Recommendation Memorandum on the  
Nebraska Democratic Party (NDP) (A11-18)

Pursuant to Commission Directive No. 70 (FEC Directive on Processing Audit Reports), the Audit staff presents its recommendations below and discusses the findings in the attached Draft Final Audit Report (DFAR). The Office of General Counsel has reviewed this memorandum and concurs with the recommendations.

**Finding 1. Recordkeeping for Employees**

For the period covered by the audit, NDP did not maintain any monthly payroll logs, as required, to document the percentage of the time each employee spent on federal election activity. For 2009 and 2010, the Audit staff identified payments to NDP employees totaling \$300,708 for whom NDP was required to maintain monthly payroll logs. All of these individuals were paid with an allocation of federal and non-federal funds and disclosed on Schedule H4 (\$282,882) or with exclusively non-federal funds (\$17,826). Of the employees paid exclusively with non-federal funds (\$17,826) there were two employees (receiving non-federal payments of \$3,642) that were also paid with federal funds in the same month.

The remaining employees (receiving non-federal payments of \$14,184) were paid exclusively with non-federal funds and were not paid with federal funds in the same month. During audit fieldwork, the Audit staff provided NDP with a schedule of employees paid with an allocation of federal and non-federal funds. An NDP representative completed this schedule by inserting the percentage of time each employee spent in connection with federal election activity and provided a signed affidavit in which he attested to the accuracy of information provided.

In response to the Interim Audit Report recommendation, NDP stated that it has established procedures to maintain contemporaneous documents to certify the payroll records for employees paid exclusively with non-federal funds or with an allocation of federal and non-federal funds. NDP made no further comments in response to the DFAR.

It should be noted that this finding does not contain contract labor totaling \$36. NDP made this one-time payment from its federal account and disclosed it on Schedule H4 with the notation "Building Maintenance."

The Audit staff recommends that the Commission find that NDP failed to maintain monthly time logs to document the time employees spent on federal election activity totaling \$300,708. This amount includes payroll paid as follows to NDP employees.

- A. Employees reported on Schedule H4 and paid with allocated federal and non-federal funds during the same month (totaling \$282,882);
- B. Employees reported on Schedule H4 or Schedule B and also paid with 100 percent non-federal funds during the same month (totaling \$3,642) and,
- C. Employees paid exclusively with non-federal funds in a given month (totaling \$14,184).

### **Finding 2. Reporting of Debts and Obligations**

During audit fieldwork, the Audit staff noted that NDP had failed to disclose debts and obligations totaling \$120,447. In response to the Interim Audit Report recommendation, NDP filed amended reports to materially disclose these debts and obligations. NDP made no further comments in response to the DFAR.

The Audit staff recommends that the Commission find that NDP failed to itemize debts and obligations totaling \$120,447.

### **Finding 3. Excessive Coordinated Party Expenditures**

The Audit staff initially determined that NDP exceeded the 2010 coordinated party expenditures limit on behalf of a House candidate by \$34,789. In response to the Interim Audit Report recommendation, NDP provided support that an expenditure for a campaign sign (\$578) was not intended as a public communication. The Audit staff did not apply the expenditure of \$578 towards the coordinated expenditure limit.

NDP also made expenditures totaling \$99,206 for a candidate mailer (\$94,610) and a candidate postcard (\$4,596) that may be attributable to the coordinated

expenditure limit. For these expenditures, NDP provided some documentation to support its contention that the volunteer materials exemption applies to these expenditures and the amount should not be attributed towards the coordinated expenditure limit. In view of the uncertainty regarding the amount of volunteer involvement needed to qualify for the volunteer materials exemption, as well as the amount of documentation required to support such an exemption, the Audit staff did not attribute these expenditures totaling \$99,206 towards the coordinated expenditure limit.

The Audit staff recommends that due to the lack of clarity regarding the level of volunteer involvement needed to qualify for the volunteer materials exemption, the Commission not attribute expenditures totaling \$99,206 towards the coordinated expenditure limitation.

The Audit staff recommends that the Commission find that NDP exceeded the 2010 coordinated party expenditure limit by \$29,615 (\$34,789 less the candidate postcard (\$4,596) and the campaign sign (\$578)).

NDP did not request an audit hearing.

If this memorandum is approved, a Proposed Final Audit Report will be prepared within 30 days of the Commission's vote.

In case of an objection, Directive No. 70 states that the Audit Division Recommendation Memorandum will be placed on the next regularly scheduled open session agenda.

Documents related to this audit report can be viewed in the Voting Ballot Matters folder. Should you have any questions, please contact Sheraline Thomas or Zuzana Pacious at 694-1200.

**Attachment:**

- Draft Final Audit Report of the Audit Division on the Nebraska Democratic Party

cc: Office of General Counsel



# Draft Final Audit Report of the Audit Division on the Nebraska Democratic Party

(January 1, 2009 - December 31, 2010)

## Why the Audit Was Done

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.<sup>1</sup> The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

## Future Action

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

## About the Committee (p. 2)

The Nebraska Democratic Party is a state party committee headquartered in Lincoln, Nebraska. For more information, see the chart on the Committee Organization, p. 2.

## Financial Activity (p. 2)

### • Receipts

○ Contributions from Individuals	\$ 218,270
○ Contributions from Political Committees	24,202
○ Transfers from Affiliates	1,682,699
○ Transfer from Non-federal Accounts	344,901
○ Other Receipts	185,066
<b>Total Receipts</b>	<b>\$ 2,455,138</b>

### • Disbursements

○ Operating Expenditures	\$ 540,126
○ Other Federal Expenditures	129,323
○ Federal Election Activity	1,490,477
○ Transfers to Affiliates	138,967
○ Coordinated Expenditures	114,788
○ Independent Expenditures	12,475
○ Other Disbursements	35,174
<b>Total Disbursements</b>	<b>\$ 2,461,330</b>

## Findings and Recommendations (p. 3)

- Recordkeeping for Employees (Finding 1)
- Reporting of Debts and Obligations (Finding 2)
- Excessive Coordinated Party Expenditures (Finding 3)

<sup>1</sup> 2 U.S.C. §438(b).

# **Draft Final Audit Report of the Audit Division on the Nebraska Democratic Party**

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(January 1, 2009 - December 31, 2010)



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# Part I

## Background

### Authority for Audit

This report is based on an audit of the Nebraska Democratic Party<sup>2</sup> (NDP), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 2 U.S.C. §438(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 2 U.S.C. §434. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine whether the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 2 U.S.C. §438(b).

### Scope of Audit

Following Commission-approved procedures, the Audit staff evaluated various risk factors and as a result, this audit examined:

1. the disclosure of individual contributors' occupation and name of employer;
2. the disclosure of disbursements, debts and obligations;
3. the disclosure of expenses allocated between federal and non-federal accounts;
4. the consistency between reported figures and bank records;
5. the disclosure of independent and coordinated expenditures;
6. the completeness of records; and
7. other committee operations necessary to the review.

### Commission Guidance

#### Request for Early Commission Consideration of a Legal Question

Pursuant to the "Policy Statement Establishing a Program for Requesting Consideration of Legal Questions by the Commission," NDP requested early consideration of a legal question raised during the audit. NDP questioned whether the monthly time logs required under 11 CFR § 106.7(d)(1) applied to employees paid with 100 percent federal funds.

The Commission concluded, by a vote of 5-1, that 11 CFR § 106.7(d)(1) does require committees to keep a monthly log for employees paid exclusively with federal funds. Exercising its prosecutorial discretion, however, the Commission decided it will not pursue recordkeeping violations for the failure to keep time logs or to provide affidavits to account for employee salaries paid with 100 percent federal funds and reported as such. The Audit staff informed NDP Counsel of the Commission's decision on NDP's request. This audit report does not include any finding or recommendation with respect to NDP's employees paid with 100 percent federal funds and reported as such.

<sup>2</sup> The committee's name during the audit period was the Nebraska Democratic State Central Committee and was changed subsequently on April 4, 2012.

## Part II

### Overview of Committee

#### Committee Organization

<b>Important Dates</b>	
• Date of Registration	December 3, 1975
• Audit Coverage	January 1, 2009 - December 31, 2010
<b>Headquarters</b>	
Lincoln, Nebraska	
<b>Bank Information</b>	
• Bank Depositories	One
• Bank Accounts	Five Federal and Two Non-federal Checking Accounts
<b>Treasurer</b>	
• Treasurer When Audit Was Conducted	Gerry Finnegan
• Treasurer During Period Covered by Audit	Gerry Finnegan
<b>Management Information</b>	
• Attended Commission Campaign Finance Seminar	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

#### Overview of Financial Activity (Audited Amounts)

<b>Cash-on-hand @ January 1, 2009</b>	<b>\$ 63,195</b>
<b>Receipts</b>	
o Contributions from Individuals	218,270
o Contributions from Political Committees	24,202
o Transfers from Affiliates	1,682,699
o Transfers from Non-federal Accounts	344,901
o Other Receipts	185,066
<b>Total Receipts</b>	<b>\$ 2,455,138</b>
<b>Disbursements</b>	
o Operating Expenditures	540,126
o Other Federal Expenditures	129,323
o Federal Election Activity	1,490,477
o Transfers to Affiliates	138,967
o Coordinated Expenditures	114,788
o Independent Expenditures	12,475
o Other Disbursements	35,174
<b>Total Disbursements</b>	<b>\$ 2,461,330</b>
<b>Cash-on-hand @ December 31, 2010</b>	<b>\$ 57,003</b>



## **Part III**

### **Summaries**

## **Findings and Recommendations**

### **Finding 1. Recordkeeping for Employees**

During audit fieldwork, the Audit staff noted that NDP did not maintain any monthly payroll logs, as required, to document the percentage of time each employee spent on federal election activity. For 2009 and 2010, the Audit staff identified payments to NDP employees totaling \$293,439<sup>3</sup> for which payroll logs were not maintained. This amount consisted of payroll which was allocated between federal and non-federal funds and payroll paid exclusively with non-federal funds.

In response to the Interim Audit Report recommendation, NDP stated that it has established procedures to maintain contemporaneous documents to certify the payroll records for employees paid exclusively with non-federal funds or with an allocation of federal and non-federal funds.

(For more detail, see p. 5.)

### **Finding 2. Reporting of Debts and Obligations**

During audit fieldwork, the Audit staff noted that NDP had failed to correctly disclose debts and obligations totaling \$120,447. The Audit staff recommended that, absent documentation demonstrating that these expenditures did not require reporting on Schedule D (Debts and Obligations), NDP amend its disclosure reports to disclose these debts properly. In response to the Interim Audit Report recommendation, NDP filed amended reports to materially disclose these debts and obligations.

(For more detail, see p. 6.)

### **Finding 3. Excessive Coordinated Party Expenditures**

During audit fieldwork, the Audit staff identified coordinated party expenditures made by NDP for a House candidate that appeared to exceed the 2010 coordinated party expenditure limitation by \$34,789.

In response to the Interim Audit Report recommendation, NDP provided statements and documents to support its contention that two expenditures totaling \$5,174 should not be considered excessive coordinated party expenditures. In addition, NDP acknowledged that it received \$80,000 from the Democratic Congressional Campaign Committee (DCCC) prior to making expenditures on behalf of the House candidate. NDP provided a letter from DCCC in which DCCC further ceded, albeit untimely, \$6,600 to NDP in

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<sup>3</sup> This total does not include payroll for employees paid with 100 percent federal funds and reported as such (see Part I, Background, Commission Guidance, Request for Early Commission Consideration of a Legal Question, page 1).

2012. NDP argues that this amount remains unspent and therefore should reduce the amount of excessive expenditures.

Lastly, NDP acknowledged that apparent Coordinated Expenditures totaling \$29,615, identified by the Audit staff, were inadvertently and incorrectly classified GOTV ("Get Out the Vote") calls as generic GOTV calls due to a miscommunication with the candidate campaign. NDP materially amended its disclosure reports and included these expenditures on Schedule F (Coordinated Party Expenditures).

After considering the Interim Audit Report response, the Audit staff recalculated the excessive coordinated expenditures to be \$29,615. The revised figure adjusts for the \$4,596 which NDP claims as exempt under the volunteer materials exemption. (For more detail, see p. 8.)

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## Part IV

# Findings and Recommendations

### Finding 1. Recordkeeping for Employees

#### Summary

During audit fieldwork, the Audit staff noted that NDP did not maintain any monthly payroll logs, as required, to document the percentage of time each employee spent on federal election activity. For 2009 and 2010, the Audit staff identified payments to NDP employees totaling \$293,439<sup>4</sup> for which payroll logs were not maintained. This amount consisted of payroll which was allocated between federal and non-federal funds and payroll paid exclusively with non-federal funds.

In response to the Interim Audit Report recommendation, NDP stated that it has established procedures to maintain contemporaneous documents to certify the payroll records for employees paid exclusively with non-federal funds or with an allocation of federal and non-federal funds.

#### Legal Standard

**Maintenance of Monthly Logs.** Party committees must keep a monthly log of the percentage of time each employee spends in connection with a federal election.

Allocations of salaries, wages, and fringe benefits are to be undertaken as follows:

- employees who spend 25% or less of their compensated time in a given month on federal election activities must be paid either from the federal account or be allocated as administrative costs.
- employees who spend more than 25% of their compensated time in a given month on federal election activities must be paid only from a federal account; and,
- employees who spend none of their compensated time in a given month on federal election activities may be paid entirely with funds that comply with state law. 11

CFR §106.7(d)(1)

#### Facts and Analysis

##### A. Facts

During fieldwork, the Audit staff reviewed disbursements NDP made to employees for payroll, totaling \$300,708<sup>5</sup>, for which monthly logs were not provided to document the percentage of time the employee spent in connection with federal election activity. These logs are required to document proper allocation of federal and non-federal funds used to pay these workers. The total of \$300,708 consisted of \$282,882 for which payroll was

<sup>4</sup> This total does not include payroll for employees paid with 100 percent federal funds and reported as such (see Part I, Background, Commission Guidance, request for Early Commission Consideration of a Legal Question, page 1).

<sup>5</sup> Payroll is stated net of taxes.

allocated between federal and non-federal funds and \$17,826 that was paid exclusively with non-federal funds.<sup>6</sup> Of the \$17,826, NDP paid \$14,184 to 32 employees that were not reported on either Schedule H4 or Schedule B during the audit period. The remaining two individuals were reported as receiving salary payments on either Schedules H4 or Schedule B during the report period.

As part of fieldwork, the Audit staff provided NDP with a schedule of employees with an allocation of federal and non-federal funds for which a log was required. An NDP representative completed this schedule by inserting the percentage of time each employee spent in connection with federal election activity and provided a signed affidavit in which a NDP representative attested to the accuracy of the information provided.

#### **B. Interim Audit Report & Audit Division Recommendation**

At the exit conference, the Audit staff discussed the recordkeeping issue with NDP representatives. They asked whether the schedule and the affidavit they had provided would resolve the recordkeeping finding. The Audit staff explained that because NDP did not create and maintain these documents prior to the audit notification letter, but instead prepared them during fieldwork, the issue would be included in the Interim Audit Report.

For NDP employees that were paid exclusively with non-federal funds or with an allocation of federal and non-federal funds, the Interim Audit Report recommended that NDP provide and implement a plan to maintain monthly payroll logs to track the percentage of time each employee spends on federal election activity.

#### **C. Committee Response to Interim Audit Report**

In response to the Interim Audit Report recommendation, NDP stated that, while it has already provided the documentation reflecting how much time employees spent on federal election activity, it agreed to maintain such records contemporaneously with payroll activities in the future. The Audit staff considers this matter resolved.

## **Finding 2. Reporting of Debts and Obligations**

### **Summary**

During audit fieldwork, the Audit staff noted that NDP had failed to correctly disclose debts and obligations totaling \$120,447. The Audit staff recommended that, absent documentation demonstrating that these expenditures did not require reporting on Schedule D (Debts and Obligations), NDP amend its disclosure reports to disclose these debts properly. In response to the Interim Audit Report recommendation, NDP filed amended reports to materially disclose these debts and obligations.

<sup>6</sup> The total amount of payroll and payroll paid from non-federal funds figures were adjusted from the Interim Audit Report amounts of \$293,439 and \$10,557, respectively.

## **Legal Standard**

**A. Continuous Reporting Required.** A political committee must disclose the amount and nature of outstanding debts and obligations until those debts are extinguished.

2 U.S.C. §434(b)(8) and 11 CFR §§104.3(d) and 104.11(a).

**B. Separate Schedules.** A political committee must file separate schedules for debts owed by and to the committee with a statement explaining the circumstances and conditions under which each debt and obligation was incurred or extinguished.

11 CFR §104.11(a).

**C. Itemizing Debts and Obligations.**

- Once it has been outstanding 60 days from the date incurred, a debt of \$500 or less must be reported on the next regularly scheduled report.
- A debt exceeding \$500 must be disclosed in the report that covers the date on which the debt was incurred, except reoccurring administrative expenses (such as rent) shall not be reported as a debt before the payment due date.

11 CFR §104.11(b).

## **Facts and Analysis**

### **A. Facts**

During audit fieldwork, the Audit staff used available disbursement records to reconcile the accounts<sup>7</sup> of NDP's 11 largest vendors. These vendors provided NDP mainly with services such as office space, phone bank, printing and compliance services.

The Audit staff reviewed the vendors' invoiced amounts and identified unreported debts and obligations, totaling \$105,447, owed to 10 of its vendors. Included in this balance were payments totaling \$4,500 for office space that NDP made more than 30 days late throughout the audit period. Regularly reoccurring administrative expenses such as rent are reportable as debts if payment is not made by the due date.

In addition to the unreported debts discussed above, NDP incorrectly reported debt amounts owed to one vendor. The under-reported debts total \$15,000 for the audit period.<sup>8</sup>

### **B. Interim Audit Report & Audit Division Recommendation**

The Audit staff presented this matter to NDP representatives at the exit conference and provided schedules detailing the unreported and under-reported debts for each reporting period for the audited cycle. NDP representatives objected to the inclusion of rent, a

<sup>7</sup> The reconciliation consisted of calculating invoiced and paid amounts for individual reporting periods in the 2009-2010 campaign cycle. The Audit staff then determined whether any outstanding debts were correctly disclosed on Schedule D. Each debt amount was counted once, even if it required disclosure over multiple reporting periods.

<sup>8</sup> The total amount of reportable debt to this vendor was \$34,500. NDP reported only \$19,500 on its 2009 and 2010 disclosure reports. The underpayment was calculated as follows: \$34,500 - \$19,500 = \$15,000.

regularly recurring obligation, appearing on the debt schedule. The Audit staff acknowledged that regularly occurring administrative expenses are not debt reportable as long as they are paid by the due date; however, NDP had consistently paid its rent more than 30 days after the payment was due.

The Interim Audit Report recommended that NDP provide documentation demonstrating that these expenditures did not require reporting on Schedule D. Absent such documentation, the Interim Audit Report recommended that NDP amend its reports to disclose the outstanding debts.

### **C. Committee Response to Interim Audit Report**

In response to the Interim Audit Report recommendation, NDP filed amended reports to materially disclose these debts and obligations.

## **Finding 3. Excessive Coordinated Party Expenditures**

### **Summary**

During audit fieldwork, the Audit staff identified coordinated party expenditures made by NDP for a House candidate that appear to exceed the 2010 coordinated party expenditure limitation by \$34,789.

In response to the Interim Audit Report recommendation, NDP provided statements and documents to support its contention that two expenditures totaling \$5,174 should not be considered excessive coordinated party expenditures. In addition, NDP acknowledged that it received \$80,000 from the Democratic Congressional Campaign Committee (DCCC) prior to making expenditures on behalf of the House candidate. NDP provided a letter from DCCC in which DCCC further ceded, albeit untimely, \$6,600 to NDP in 2012. NDP argues that this amount remains unspent and therefore should reduce the amount of excessive expenditures.

Lastly, NDP acknowledged that apparent Coordinated Expenditures totaling \$29,615, identified by the Audit staff, were inadvertently and incorrectly classified GOTV ("Get Out the Vote") calls as generic GOTV calls due to a miscommunication with the candidate campaign. NDP materially amended its disclosure reports and include these expenditures on Schedule F (Coordinated Party Expenditures).

After considering the Interim Audit Report response, the Audit staff recalculated the excessive coordinated expenditures to be \$29,615. The revised figure adjusts for the \$4,596 which NDP claims as exempt under the volunteer materials exemption.

### **Legal Standard**

**A. Coordinated Party Expenditures.** National party committees and state party committees are permitted to purchase goods and services on behalf of candidates in the general election—over and above the contributions that are subject to contribution limits. Such purchases are referred to as "coordinated party expenditures." They are subject to the following rules:

- The amount spent on "coordinated party expenditures" is limited by statutory formulas that are based on the Cost of Living Adjustment (COLA) and the voting age population;
- Party committees are permitted to coordinate the spending with the candidate committees;
- The parties may make these expenditures only in connection with the general election;
- The party committees—not the candidates—are responsible for reporting these expenditures; and
- If the party committee exceeds the limits on coordinated party expenditures, the excess amount is considered an in-kind contribution, subject to the contribution limits. 2 U.S.C. §441a(d) and 11 CFR §§109.30 and 109.32.

**B. Assignment of Coordinated Party Expenditure Limit.** A political party may assign its authority to make coordinated party expenditures to another political party committee. Such an assignment must be made in writing, state the amount of the authority assigned, and be received by the assignee before any coordinated party expenditure is made pursuant to the assignment. The political party committee that is assigned authority to make coordinated party expenditures must maintain the written assignment for at least three years. 11 CFR §§104.14 and 109.33(a) and (c).

**C. Volunteer Activity.** The payment by a state committee of a political party of the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids or newsletters, and yard signs) used by such committee in connection with volunteer activities on behalf of any nominee(s) of such party is not a contribution, provided that the following conditions are met:

1. Such payment is not for cost incurred in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising. The term direct mail means any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists.
2. The portion of the cost of such materials allocable to Federal candidates must be paid from contributions subject to the limitations and prohibitions of the Act.
3. Such payment is not made from contributions designated by the donor to be spent on behalf of a particular candidate for Federal office.
4. Such materials are distributed by volunteers and not by commercial or for-profit operations.
5. If made by a political committee, such payments shall be reported by the political committee as a disbursement in accordance with 11 CFR §104.3 but need not be allocated to specific candidates in committee reports.
6. The exemption is not applicable to campaign materials purchased by the national party committees. 11 CFR §100.87 (a), (b), (c), (d), (e) and (g) and 11 CFR §100.147 (a), (b), (c), (d), (e) and (g).

**D. Limits on Contributions Made by State and Local Party Committees.**  
State and local party committees must comply with the contribution limits below:

- \$5,000 per election to a Federal campaign if the contributing committee has qualified as a multicandidate committee;
- \$2,400 per election to a Federal campaign if the contributing committee has not qualified as a multicandidate committee;
- \$5,000 per year to a separate segregated fund (corporate or labor political action committee) or a non-connected committee; and
- unlimited transfers to other party committees. 2 U.S.C. §441a(a).

## **Facts and Analysis**

### **A. Facts**

The coordinated expenditure limit for the 2010 election cycle for a House candidate in the state of Nebraska was \$43,500 each for the state and national party committees. During audit fieldwork, the Audit staff reviewed the correspondence between NDP and the DCCC that addressed the coordinated expenditures. On May 25, 2010, NDP transferred its entire coordinated spending limit to DCCC. This permitted DCCC to make coordinated expenditures of \$87,000 on behalf of Tom White, Democratic candidate for the United States House of Representatives from Nebraska's 2<sup>nd</sup> Congressional District (the candidate). Additional documentation indicated that DCCC authorized NDP to spend no more than \$80,000 of its coordinated party spending limit on behalf of the candidate.<sup>9</sup>

The Audit staff's review of disbursements indicated that NDP appeared to make coordinated expenditures on behalf of the candidate that totaled \$114,789, as outlined below.

- NDP reported three media-related expenditures totaling \$85,174 as coordinated expenditures on behalf of the candidate. Specifically, NDP spent \$80,000 on a media ad in opposition to the candidate's opponent, \$4,596 on production of a candidate postcard, and \$578 for campaign signage.
- After the coordinated spending limit was established, NDP reported two additional disbursements, totaling \$29,615, for "generic GOTV ("Get Out the Vote") calls as federal election activity on its disclosure reports. The scripts provided by the vendor seem to indicate there was possible coordination with the candidate's committee since the scripts contained the message to vote for the candidate and included a disclaimer that the message was paid for by NDP and authorized by the candidate.

In addition to the expenditures discussed above, NDP spent \$94,610 to produce a single mailer on behalf of the candidate. This amount consisted of the following components: layout and production (\$92,610) and postage (\$2,000). NDP considered the cost of the entire mailer to be an exempt activity under the volunteer materials exemption. To support its assertion, NDP provided vendor statements and invoices along with photographs of the volunteers participating in various duties such as reviewing, sorting, and packing the direct mail pieces.

<sup>9</sup> DCCC filings disclosed an additional candidate expenditure in the amount of \$353, leaving DCCC with an unused coordinated limit of \$6,647; (\$87,000 - \$80,000 - \$353.)



The Commission has addressed the applicability of the volunteer materials exemption in the Final Audit Reports of the Democratic Executive Committee of Florida and the Tennessee Republican Party. In these reports, the Commission recognized a lack of clarity regarding the application of the volunteer materials exemption. In recognizing the lack of clarity, the Commission has attempted to formulate a consensus policy regarding what constitutes substantial volunteer involvement for the purpose of applying the exemption.<sup>10</sup>

In view of the uncertainty regarding the amount of volunteer involvement needed to qualify for the volunteer materials exemption, as well as the amount of documentation required to support such an exemption, the expenditures for the mailer totaling \$94,610 have not been attributed to NDP's coordinated expenditure limit.

The Audit staff concluded that NDP spent \$114,789 on coordinated expenditures and exceeded its authorized coordinated party expenditure limit by \$34,789.<sup>11</sup> As a result, these expenditures are considered an excessive in-kind contribution to the candidate.

#### **B. Interim Audit Report & Audit Division Recommendation**

The Audit staff discussed this matter at the exit conference and provided schedules detailing the possible excessive in-kind contributions NDP made on behalf of the candidate. In response, NDP representatives stated their belief that some of the amounts reported on Schedule F might not actually have been coordinated expenditures.

The Interim Audit Report recommended that NDP provide additional documentation demonstrating that it did not exceed the coordinated party expenditure limitation for the candidate.<sup>12</sup>

#### **C. Committee Response to Interim Audit Report**

In response to the Interim Audit Report recommendation, NDP argued that two expenditures totaling \$5,174 (items 1 and 2 below) do not represent coordinated activity and that the unspent coordinated party expenditure limitation of \$6,600 (item 3), ceded by the DCCC, should further reduce the amount of the excessive expenditure.

Regarding the expenditures and the Audit staff's calculation of amounts in excess of the coordinated expenditure limit, NDP explained as follows:

1. The payment of \$578 to an NDP vendor was merely for a sign that was placed in the window of the party's field office during the 2010 general election period. The sign was not intended as a public communication; it was placed next to the sign of many other Nebraska candidates as is commonplace for party offices.

<sup>10</sup> Proposed Interim Enforcement Policy, Open Session Agenda document No. 10-16 dated March 10, 2010, Drafts A through D.

<sup>11</sup> The amount over the limit was calculated as follows: Total spent by NDP less amount authorized by DCCC: \$114,789 - \$80,000=\$34,789. NDP made and reported the maximum allowable contribution to the candidate during the 2010 election cycle.

<sup>12</sup> The authorized committee of Tom White was approved for administrative termination on May 10, 2011. Therefore, a recommendation to seek refund from the candidate committee is not warranted.

2. NDP provided a declaration, signed and dated September 16, 2013, from its Executive Director who oversaw all political and administrative operations of NDP during the 2009/2010 election cycle. In the document, the Executive Director attested that NDP paid for the printing of the postcards (\$4,596) which advocated the election of the candidate. According to his recollection, the volunteers distributed, hand stamped, and placed the mailing labels on the postcards at the party headquarters. NDP incorrectly disclosed this payment on Schedule F and plans to amend its reports by disclosing the expenditures as Federal Election Activity (Line 30b).
3. NDP acknowledged that it received \$80,000, the coordinated party expenditure limit, from the DCCC prior to making expenditures.<sup>13</sup> In addition, NDP presented an unsigned letter from the DCCC dated April 24, 2012, in which DCCC designated NDP as its agent "...for the exclusive purpose of making expenditures pursuant to 2 U.S.C.441a(d) on behalf of [the Candidate] up to \$6,600." NDP acknowledged this authority was not ceded in a timely fashion. Nevertheless, NDP urged the Commission to acknowledge that this amount remains unspent and should therefore reduce the amount of excessive expenditure.

Lastly, NDP acknowledged that \$29,615 in apparent Coordinated Expenditures identified by the Audit staff were inadvertently and incorrectly classified GOTV ("Get Out the Vote") calls as generic GOTV calls due to a miscommunication with the candidate's campaign. NDP filed amended reports and disclosed Coordinated Expenditures on Schedule F totaling \$15,687, however, a balance of \$13,928 remains undisclosed.

The Audit staff considered NDP's response and reviewed the submitted documentation. Based on NDP's additional explanation regarding the nature and the location of the campaign sign, the Audit staff agrees that the payment of \$578 does not represent a coordinated expenditure as the sign was not intended as a public communication. Since NDP disclosed this expenditure on Schedule F, the Audit staff recommends that NDP amend its 2010 August Monthly report to disclose this disbursement on Schedule E (Independent Expenditures) since the sign contains express advocacy.

NDP's Executive Director attested to the volunteers' involvement with the printing of a candidate postcard (\$4,596). As with the other expenditures noted above, totaling \$94,610, for which NDP claims the volunteer materials exemptions, the Audit staff acknowledges the lack of clarity regarding the level of volunteer involvement needed to qualify for the volunteer materials exemption. As with the treatment of those expenditures, the Audit staff does no longer attributes the \$4,596 expenditure toward NDP's coordinated limit. NDP is encouraged, however, to provide any further documentation such as photographs of the volunteers participating in the dissemination of the candidate postcard for the Commission's consideration of the matter.

<sup>13</sup> NDP used these funds to finance its broadcast television media buy and production and disclosed this expenditure on Schedule F of its 2010 Post-General disclosure reports.

Finally, by presenting the assignment authority letter from the DCCC, NDP demonstrated that it was granted additional spending authority (\$6,600) beyond \$80,000. The Audit staff notes that the letter was issued on April 24, 2012, well after the November 2, 2010, general election. As noted in the legal standards above, 11 CFR § 109.33(a) requires that an assignment must be made in writing, state the amount of the authority assigned, and be received by the assignee before any coordinated party expenditure is made pursuant to the assignment. In similar cases, the Commission has rejected assignments of spending authority after the fact. As a result, the Audit staff did not allow for the additional spending authority of \$6,600. However, the Audit staff recognizes that the \$6,600 represents unspent funds under the combined spending authority of both committees.

As a result of NDP's response to the Interim Audit Report, the Audit staff recalculated the excessive coordinated expenditures to be \$29,615.<sup>14</sup> The revised figure adjusts for \$578 which does not represent a coordinated expenditure and \$4,596 which NDP claims as exempt from the definition of a contribution under the volunteer materials exemption.

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<sup>14</sup> Calculated as follows:  $\$29,615 = [(\$114,789 - \$578 - \$4,596) - \$80,000]$ .